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The pragmatic court- echoes of the realists: An analysis of American Realism judicial process and judicial law-making in India

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Abstract
Realism had its core in a reaction to the 'black-letter' approach to law which advocates the formal syllogistic application of law to the facts, such an approach sometimes is labeled as 'formalism' or 'mechanical approach' to Jurisprudence. Formalism offers us right and wrong answers, it encourages rigidity and a dismissive attitude to any analysis of impact of non-legal factors on the law, in other words, it treats law as an isolated, closed and logical system. The 'black-letter' approach to law is in reality an offspring of legal positivism, the pioneers of which were not concerned with the purpose or end of law rather only with logical prescription. Because of the dominance of positivism in the legal establishment, it has been the subject of many critical theories including Realism.

Keywords: Supreme court, realism, john chipnam gary, oliver wendell holmes, judicial process, judicial law-making

Introduction

It was around the 1st quarter of the 20th Century some American jurists notably, Sir Oliver Wendell Holmes, John Chipman Gray, Jerome Frank, Karl Llewellyn, Benjamin Cardozo raised their voice against legal formalism and stressed upon the study of law as it actually operates and functions, they are called Realists and their approach is called Realism or Realist School of Jurisprudence. These jurists concentrate more on courts to know the actual working of law. Realists do not support formal, logical and conceptual approach to law because courts while deciding a case reach their decision on 'emotive' rather than logical factors. Friedman said, realists prefer to evaluate any part of law in terms of its effects. American Realism is not a school of jurisprudence but it is pedagogy of thought. The realists emphasize more upon what the courts may do rather than abstract logical deductions from general rules and on the inarticulate ideological premises underlying a legal system. In the words of Professor Roscoe Pound by realism the realists mean "fidelity to nature, accurate recording of things as they are, as contrasted with things as they are imagined to be or wished to be or as one feels they ought to be. The 'realism' is anti-thesis of 'idealism'……" [1]

American Realism is a combination of the Analytical Positivism and Sociological approaches. Julius Stone calls the Realist Movement a 'gloss' on the sociological approach. [2] Legal Realism was distinctly an American approach to the philosophy of law. It was an attempt to take a hard-headed, cold-eyed look at how the legal system actually operates. It was a reaction to the formalistic account of law and 'mechanical jurisprudence.' Mechanical jurisprudence viewed law as a complex system of set and precise rules created by the legislature, it viewed role of judges to be simply determining which rules are applied to the facts of the case. Legal realists saw this as a distorted picture of law in a legal system. Holmes observed that, "The common law is not a brooding omnipresence in the sky." Instead, he thought law was a set of predictions about what courts would do. He said: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." [3]

Revolt against Formalism: In law, the revolt against formalism [4] came from sociological jurisprudence of Dean Roscoe Pound, Oliver Wendell Holmes, Sir John Chipman Gray, Jerome Frank and Benjamin Cardozo.

Oliver Wendell Holmes: Brief Biographical Sketch- Sir Oliver Wendell Holmes was born on 8 [th] March, 1841 in Boston, U.S.A. he is one of the most widely cited Supreme Court Judges and the most influential American Judges. He is also known as "the Great Dissenter" in his 29 years of judgeship he had delivered 852 majority judgments and 72 minority judgments. He became a graduate from Harvard College in 1861 and participated in American Civil War. He wrote in an autobiographical sketch that- "if I survive the war, I expect to study law as my profession or at least for a starting point." He was severely wounded three times yet he survived and returned to Boston in the summer of 1864. In 1864 he entered Harvard Law School and became a law graduate in 1866. He was admitted to the Bar Association, Massachusetts in 1867. Died on 6 [th] March, 1935 at Washington DC, U.S.A.

His Contribution: Mr. Justice Holmes of the United States Supreme Court was in many ways the founder of the American Realist Movement. He had a pragmatic approach to judicial decision making. Holmes said, "general propositions do not determine concrete cases…." [5] Holmes's definition of law in the role of courts and the scope of jurisprudence has an immense impact on the American realist thinking. Holmes was at the forefront of recognizing the role of extra-legal factors in judicial decision making, he observed-……. the life of law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, institution of public policy…… have had a good deal more to do than the syllogism in determining the rules by which men should be governed. [6] "For the rational study of the law, the black letter man may be the man of the present but the man of the future is the man of statistics and the master of economics." [7] Holmes also observed that

"……the law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics". [8]

Badman Theory: Holmes looked at law from completely a different perspective. According to him, law is to be looked at not from the standpoint of a man with a sense of moral obligation but from the standpoint of a badman, one who is not caring for any ethical rule of conduct to ascertain what will be expedient for him to do or not to do in order to avoid conflict with the law. The badman will want to know only what the courts are likely to do in fact. [9] The prophecies of what the courts will do in fact and nothing more pretentions are what Holmes does mean by law. [10] Such observations opened up the whole question of discrepancies between "law in the books" and "law in action" which became the first item in Professor Roscoe Pound's programme of sociological jurisprudence. [11]

John Chipman Gray: Brief Biographical Sketch- JC Gray was born on 14 [th] July, 1839 in Brighton, Massachusetts, USA. He earned the degree of Bachelor of Arts from Harvard University in 1859 and became a Law Graduate from Harvard Law School in 1861. He was admitted to the Bar in 1862. In 1869 Gray joined Harvard Law School as a Lecturer and became a full Professor in 1875. Died on 25 [th] February, 1915 in Boston, USA.

His Contribution: Gray had written many books, some of which are, Restraints on the Alienation of Property (1883), The Rule Against Perpetuities (1886), The Nature and Sources of the Law (1909). Gray's approach was certainly court oriented and he even went up to the extent of saying that- the law of the state or of any organized body of men is composed of the rules which the courts, that is the judicial organ of that body, lay down for the determination of legal rights and duties. [12] For Gray, law was simply what the court decided. Everything else including statutes were simply sources of law. Until the court applies statutes, they are not law. He says. law is what judges declare and judges put life into the dead words of law. Gray emphasizes the role that judges play in laying down the law because it is the judge who while interpreting the statute, custom or equity creates law rather than discovering the law. The law as expressed in statutes or customs gets meaning and precision only after the judge expresses his opinion. Gray says, "…….. law becomes concrete and positive only in the pronouncements of courts. Judge made law is the final and authoritative form of law.". [13] Gray cites numerous examples to prove his point that it is impossible to fix the law before a court lays it down in one or the other way. Citing the case of Rylands v. Fletcher, [14] Gray says that the rule laid down in this case determined the law as to strict liability which otherwise would not have been determined. Gray, therefore, as a votary of realism, suggests that the judicial pronouncements of courts are the true subject-matter of jurisprudence for evaluation. Gray's contribution to the American realist thought lies in the fact that judicial decisions often have been responsible for giving not only content but direction to political, social and economic thought. In Indian context also, if the Gopalan v. State of Madras, [15] would have been decided by the Supreme Court, differently than the way it was decided, the social, political and economic structure of India would have been different than what it is today. Also, the latter patch work of the Supreme Court in the subsequent cases (particularly, in Maneka Gandhi v. Union of India, [16]) to undo what they had decided in the Gopalan has fully restored the "due process of law" as contemplated in making the Constitution of India in a more functional and workable way.

Jerome Frank: Brief Biographical Sketch- Jerome Frank an American legal philosopher and author who played a leading role in legal Realism was born on 10 [th] September, 1889. He obtained his Bachelor of Philosophy Degree from the University of Chicago in 1909 and earned his Juris Doctor from the Law School, Chicago University in 1912 with highest grades in the Law School's history. Frank practiced as a lawyer in Chicago from 1912 to 1930. In 1941, he was appointed as a Judge of the US Court of Appeals for the Second Circuit.

His Contribution: In 1930, Frank published his classic work Law and the Modern Mind which argued against the basic legal myth that judges never make law but simply deduce legal conclusions from premises that are clear, certain and substantially unchanging i.e. positive law. Being influenced by psychologists like Sigmund Freud and Jean Piaget, Frank proposed that judicial decisions are motivated by the influence of psychological factors on the individual judge. Frank's legal classic Law and the Modern Mind (1930) drew huge attention and dropped like a bombshell on the legal and academic world and became a jurisprudential best seller.

Like his judicial hero Sir Oliver Wendell Holmes, Frank urged judges and legal scholars to acknowledge openly the gaps and uncertainties in the law and to think of law pragmatically as a tool for human betterment. In his famous Article "Say it with Music" [17] Frank compared the interpretation of statutes by judges with that of interpretation of musical composition by musicians. The great composers know that the process of interpretation is not and cannot be a mechanical and automatic one. It would ruin their works to hold that there is only a single way of interpreting the music. In the same way it is a fallacy to think that there is only one way of interpreting a statute.

Jerome Frank pointed out that, it is for the courts in deciding any case to say what the rules mean, whether those rules are embodied in a statute or in the opinion of some other court. [18] "Law is made up not of rules for decision laid down by the courts but of the decisions themselves, Frank asserted "all such decisions are law." [19] Frank wants us to study law in action. Therefore, he says that for studying law, the court room and not the library should be our laboratory.

Birth of Legal Realism: Legal Realism is commonly defined as a belief that law is a product of human action and therefore it is the result of the aims of different groups and individuals. Legal realists wanted to emphasize the importance of human will and fallibility both in the law making and interpretation processes. Karl Llewellyn in 1930 published a modest essay with an outsized title: A Realistic Jurisprudence- The Next Step. [20] In the same year Jerome Frank published Law and the Modern Mind (1930) [21] his impudent assault on what he portrayed as prevailing delusions about law and judging, with a chapter titled

"Legal Realism". [22] Perhaps in a pique, perhaps in haste and distracted by other pressing commitments, Roscoe Pound, became the target of mild criticism from Llewellyn and some sharp barbs from Frank [23]. However, Roscoe Pound critically responded the following year in his work The Call for a Realist Jurisprudence. [24] In collaboration with Frank, both were alarmed to find themselves in a brawl with the pre-eminent jurisprudence in legal academia; Llewellyn immediately countered in Some Realism About Realism- Responding to Dean Pound. [25] Legal realism was born in this skirmish.

The movement in legal theory that emerged from a few law schools in the 1920s and 1930s and came to be known as "Legal Realism" continues to hold a grip on the attention of legal scholars. [26] American Legal Realism developed from World War I to World War II in reaction against the formalism distinctive to the traditional theory of law that had established a foothold in the United States beginning in the latter half of the 19 [th] century. The formalists understood law as a science based on logic, meaning a conceptual system capable of providing unique and correct answers for each case brought under consideration. Driven by Holmes's remark that life of law has not been logic it has been experience, the realists operated along three lines of attack:

- they directed their criticism against systematic concepts and the idea of 'system',
- against dogmatic concepts and legal conceptualism, and
- against legal argumentation.

Horwitz [27] points up how the realist critique was awash in potential contradiction. Thus, from some quarters came the charge that classical jurisprudence had become too politically motivated, masquerading these preferences in a process toward abstraction and systematization of legal categories: they therefore, advocated, in remedy, a less formalistic jurisprudence more grounded in context. Horwitz further observed with respect to the realist claim that law had fallen out of touch with life. This criticism was aimed at the autonomy of law, a central tenet of all classical legal ideas. There was no doubt among the realists that law had to steer closer to life, forging legal categories more aligned with social reality and better able to reflect its complexity.

Main Features of American Realism: Professor Goodhart has enumerated the basic features of Realistic Jurisprudence in the following way: -

1. The realist school depends for its importance, not upon any definition of law but upon the emphasis it places on certain features of law and its administration. The most striking feature of this school is the stress they place upon uncertainty of law as a series of single decision.
2. The second feature of the realist school is its attack on the use of formal logic in law, which they term 'medieval scholasticism'. According to them the judge in deciding a case reaches his decision on 'emotive' rather than on logical grounds.
3. The third feature of the realist school is the great weight they place on modern psychology with strong leaning towards behaviourism.
4. The fourth feature of the realist school is the attack they have made on the value of legal terminology, for according to them, these terms are a convenient method of hiding uncertainty of our law. Professor Green protests [28] against the part which sacred words, taboo words, continue to play in our law.
5. Finally, the realists stress, [29] "an evaluation of any part of law in terms of its effects and an insistence on the worthwhileness of trying to find these effects".

The Main Concern of the Realist Movement: The main concern of the realist movement was the desire to discover how judicial decisions were reached in reality, which involves a playing down of the role of 'law in books' to discover the other factors that contributed towards a judicial decision, in other words to discover the 'law in action'. Once the realists had deciphered the factors that lead to judicial decisions, both legal and non-legal, they were concerned with the prediction of future decisions. Realists were of the opinion that judicial decision-making would be more amenable to the needs of the society if judges were open about the non-legal factors which had influenced their decisions, instead of instinctively trying to submerge them behind the facade of syllogistic legal reasoning. It was of prime concern for the realist that law should not simply be separated from the society that created it and for whose benefit it should be applied.

Conditions to legitimize judicial law-making: The condition under which judicial activism can be legitimized is a valid constitutional application of judicial power to the resolution of complex legal problems and which will of course vary from one legal culture to another. Under written constitutions, which recognize the concept of judicial review, the scope for judicial overruling of precedents is undoubtedly admitted as a necessary component of judicial power. But even if the necessity for such a power of overruling is admitted, the latitude open to the highest appellate judiciary to make a pragmatic and creative use of this power will depend upon many variables like:

a. The constitutional philosophy;
b. The underlying political - social ethos;
c. The relative dominance and leadership resources provided by democratized legislators in key areas of social change;
d. Opportunities available for pressure groups, elitist or otherwise, to articulate their positions and to make these opportunities available in a viable form to be taken cognizance of by the judicial process.

Judicial law-making and Legal Profession: Greater the creative opportunity for judges to make adaptations and innovations in the law, greater is the scope for legal profession to participate in this judicial law-making process because, in the adversary system of adjudication judicial approach to law-reform is, to a considerable extent, determined by the extent of fruitful interaction judges have with the learned advocates. Creative abilities of judges, to a large extent are shaped by professional capacity of the lawyer to persuade the judiciary to adopt the change in the law argued for. In overemphasizing the role of judges as law makers we are prone to de-emphasize the role of the legal profession as a social institution concerned with imitating and arguing for change in the law. No account of the judicial process engaged in the task of law reform can be complete unless it is receptive to the implications of the lawyer-judge communication occurring in the context of

adversary form of litigation. An informative critique focusing attention on the role of the judiciary in reconciling the law with changing social needs has been written by Arthur Von Mehren [30] wherein he emphasizes the role of the legal profession and enlightened legal education as invaluable aids to the judicial adaptation of law to societal needs. Mehren's definition of judicial process is interesting for its candid admission that judges do make new rules and principles in adapting rules of law as social circumstances permit. [31]

What determines the quality of Judicial Process in any given society? In order to answer this question Mehren [32] calls attention to the following four elements:

1. The position in sociological terms of law and the legal profession in a given society;
2. The approaches and habits of thought that are encouraged by the courts in their social defence of private and public rights;
3. The quality of legal education, the kind of man and mind it produces; and
4. The opportunities in terms of service and economic reward open to men of legal profession.

Conceptualizing the Judicial Decision-Making Process: While the courts in India are considered central to upholding the rule of law, fundamental rights and propriety of the constitution, it is only quite recently that scholars have begun to analyse the determinants of the judicial decision-making process on socio-economic, political and environmental issues. Of central concern in this respect are the factors and conditions that enable the emergence of an assertive and active Supreme Court, especially with regard to the field of environmental protection. The three decades from 1980 to 2010 have witnessed a series of studies on the judicial decision-making processes across different parts of the world. There exist a number of well-known studies on the American and European courts; so also, in the Indian context, there are an increasing number of studies on the Supreme Court. The increasing intervention of the Supreme Court in the area of governance has drawn the attention of not only legal scholars but also scholars from other disciplines. These scholars have examined why and what factors determine the intervention of the Court in the affairs of the executive and the legislature. Although most of the studies up to the early 1990s look into the relationship between the Parliament and the judiciary, more recent studies from the mid- 1990s onwards have explored the factors determining the increasing intervention of the Supreme Court in the areas of governance and human rights (Baxi 1996, 1997, 2000, Godbole 2009 [33], Sathe 2002 [34]). Many scholars have identified factors determining the outcome of judicial decision making in India such as the behaviour of individual judges (Gadbosis Jr.) [35], the ideological position of judges (Baxi 2000, Sathe 2002), the prevailing socio-economic and political conditions of the system (Das 2000 [36]) and the like. [37]

Theories of Judicial Decision-Making Process: Broadly, there are two important theories that explain the judicial decision-making process: the mechanical theory of jurisprudence and free legal decision theory. At its core, the mechanical jurisprudence theory is based on the notion that judicial decisions originate solely from statutes, constitutional provisions and the facts of the case. It views judges as constrained decision makers who 'will base their opinions on precedent and will adhere to the doctrine of stare decisis' [38] (Brenner and Stier 1996). Some scholars label this as 'mechanical jurisprudence' because the process by which judges reach decisions is highly structured. Further, according to this theory, the individual values and ideological inclinations of the justices concerned do not influence the process of constitutional interpretation to a significant degree. The judges are mere interpreters of the law; they do not make law. In other words, mechanical jurisprudence is confined to the interpretation of the law as laid down by the Constitution. Many legal scholars subscribed to the belief that judges embraced mechanical jurisprudence to law until the twentieth century.

However, the 1920s saw the emergence of 'free legal decision theory', wherein scholars began to recognize that judges could be influenced by factors other than simply law and precedent (Cardozo 1921 [39], Pritchett 1945). Free legal decision theory recognizes the element of human activity in respect of interpretation of the Constitution by the judiciary. This theory clearly admits that factors like individual values, biases, fears, hopes and preferences assume significance in the interpretation of the Constitution by a judge. In fact, it argues that the judicial decision-making process cannot be isolated from the social process because judicial decisions concern aspects of human and social welfare. It is further to be noted that according to this theory, the Constitution means what it does today because of the values of the judges who have interpreted it over the years. Free legal decision theory allows judges enough scope to use their ideological space as a guide to sift through the various legal factors presented and utilised in each case. Thus, the functional aspects of law are not irrelevant but they must be filtered through the attitudes and preferences of the judges concerned. The theory further states out that it is impossible to disentangle the effects of ideology from legal interpretations since the latter is merely a function of the former.

Understanding the Judicial Decision-Making Process: It is rare for the highest court in a democratic country to prescribe measures that directly lay down or implement policy. Yet, since 1980, the Indian courts have regularly done so on issues of public interest, offering policy directions to the government both at the Centre and in the States. One thread appears to run through almost all the judgments—the Court feels obliged to step in whenever and wherever the executive fails in its duty. Illustrative of this is the increasing judicial review of government decisions on crucial socio-economic, political and environmental issues in the post-Emergency period.

In the case of Maneka Gandhi v. Union of India, [40], which involved Maneka Gandhi's passport being seized, the Supreme Court eventually introduced the concept of "due process of law" to Indian jurisprudence. The Court held that the mere fact that the stipulated procedures had been followed before depriving Maneka Gandhi of her passport did not amount to due process having been followed. It ruled that due process must be followed and that the law must be shown to be 'right, just and fair' where fundamental rights are curtailed. In the case of Indira Sawhney and Others v. Union of India [41], the Supreme Court upheld the proposed reservations for the Other Backward Classes

(OBCs) but subjected them to important caveats. These included the stipulations that the creamy layer' of OBCs be excluded from reservations and also that reservations must not exceed fifty per cent of the total available jobs. The Court observed that with twenty-two per cent already reserved for the Scheduled Castes and Scheduled Tribes, this meant OBCs could get a quota of only twenty-seven percent.

In the case of Supreme Court Advocates-on-Record Association and Others, v. Union of India [42], which is also known as the "second judges' case", a nine-judge Supreme Court bench ruled that the executive cannot go against the opinion of the Chief Justice of India (CJI) in the appointment of judges to the Supreme Court and High Courts. It spelt out the consultative process the CJI must go through in forming his or her opinion. This overturned a 1982 judgment in the "first judges transfer case [43]" which had given primacy to the executive in appointments to the higher judiciary. Finally, the Collegium System for the appointment of Supreme Court and High Court Judges was formulated in its present form through the unanimous decision of a nine-judge bench in Re Presidential Reference (Third Judges Transfer Case) [44]. In the case of S. R. Bommai v. Union of India, [45] in 1994, which is generally referred to as the Bommai judgment, a nine-judge Supreme Court bench held that the proclamation of Presidents Rule in a state under Article 356 was not immune to judicial review. It also held that such a proclamation would have to be ratified by both houses of Parliament. The 11 [th] March 1994 ruling in the case had the effect of drastically curbing the wanton use of Article 356 by parties at the Centre against State Governments run by their rivals.

In 1997 as part of its judgment in the Jain Hawala case Vineet Narain & Others v. Union of India & Another [46], the Supreme Court said Central Vigilance Commission should be made a statutory body and that the Central Vigilance Commissioner (CVC) should be appointed by a three- member panel consisting of the prime minister, home minister and leader of opposition.

It tried to insulate the Central Bureau of Investigation (CBI) and the Enforcement Directorate from political control by saying that the beads of these two bodies should be appointed by a panel headed by the CVC. In the case of People's Union of Civil Liberties v. Union of India [47], in 2003, a three-judge Supreme Court bench made it mandatory for election candidates to declare assets, criminal cases filed against them and educational background. The poll panel followed with a notification to the same effect a month later. The government tried to counter this through an amendment to the Representation of the People Act based on an all-party consensus. In 2003, another bench struck down the amendment as unconstitutional.

Other important judgments reflecting increasing judicial review of government decisions by the Supreme Court include: the decision to quash the appointment of P. J. Thomas as CVC in 2011, challenging the government's effort in tracking black money in 2011, cancelling 122 telecom licenses in the 2G spectrum case in 2012, directing the government to stop the Haj subsidy policy in 2012, questioning the integrity and functioning of the CBI in 2013, etc. These and many other Supreme Court judgments in the recent past have prescribed measures that directly lay down or implement policies that are supposed to be carried out by other branches of the government. As in the case of other public interest and social welfare issues, the Supreme Court has also shown extraordinary activism in the field of environmental governance [48] in the post-Emergency period.

Conclusion

Studies on court functioning in general and the Supreme Court of India in particular reveal the impact of legal and extra-legal factors on the judicial decision-making process, both theoretically and analytically. It is an established fact now that not only individual behaviour of judges but also various other legal and extra-legal factors play a significant role in the judicial decision-making process in India. For instance, in his work on the Supreme Court of India, Gobind Das [49] points out that the current political mood of the country, the prevailing economic situation and the dominant ideas prevalent in society at a particular time have all influenced the activities of the Indian judiciary. The values that the Court seeks to uphold during any particular period are determined by such ideas and the Court's own appreciation of the needs of society. A close look at the judicial institutions in India since independence reveals how the nature of political establishment has shaped and reshaped judicial activism in India in different ways. [50] Another important factor contributing to rising judicial power in India has been the role played by civil society and rights-based movements. The failure of implementing agencies to protect the environment and human rights compelled civil society groups, who consider the judiciary to be more accessible and democratic than the legislature or the executive bodies, to approach the courts, especially since environmental issues get more attention from the judiciary than from political parties. The mobilisation of legal strategies by environmental groups, to some extent, empowers the judiciary in the environmental decision-making process.

The role of the Court has become crucial and significant in every sphere of governance, including issues such as prisoners' rights [51]; child labour and bonded labour [52]; the rights of residents in asylum [53]; the right to education [54], shelter [55] and other essential amenities; sexual harassment of women in the workplace [56]; corruption in public offices [57]; right to free legal aid [58]; right to compensation [59]. The assertive role of the judiciary has become an important phenomenon in the Indian society today, turning dreams of millions of have-nots, downtrodden, and disadvantaged into a reality.

References

1. Karl.N. Llewellyn, Some Realism About Realism-Responding to Dean Pound, 44 Harv. L. Rev. 1222 (1931)
2. Stone, Social Dimension of Law and Justice, p.62
3. Oliver Wendell Holmes, The Common Law (1881), Little, Brown & Co., Boston, USA
4. This famous expression made its way into the title of Morton Gabriel White's Social Thought in America: The Revolt Against Formalism, New York: Viking Press, 1949.
5. O.W. Holmes cited in W.E. Rumble, American Legal Realism: Skepticism, Reform and the Judicial Process (1968) pp. 39-40, Ithaca, NY: Cornell University Press
6. The Mind and Faith of Justice Holmes: His Speeches, Essays, Letters and Judicial Opinions, New York: Random House, 1943, p. 51 [Selected and Edited with an Introduction and Commentary by Max Lerner 8 years after death of Mr. Justice Holmes, Mr Lerner was infatuated with Mr., Justice Holmes]

7. Holmes Oliver Wendell, The Path of the Law, Harvard Law Review 10 (1897) p. 457. [The expression "black letter man" refers to doctrinal law: the basic rules and principles of law, which were often placed in bold black letters in law treatises]
8. O.W. Holmes, The Common Law (Boston 1923) p.1
9. O.W. Holmes, The Path of the Law, 10 Harvard Law Review, (1897), pp. 457-478
10. Oliver Wendell Holmes, The Common Law (1881), Little, Brown & Co., Boston, USA
11. Julius Stone, Social Dimensions of Law and Justice, Sydney (1966) 63
12. John Chipman Gray, The Nature and Sources of the Law, New York: MacMillan Co., 1924, 2nd edn. From the author's notes by Ronald Gray, Editor, p.84. [The Nature and Sources of the Law: First published by the Columbia University Press, New York in 1909.]
13. J.C. Gray, The Nature and Sources of Law, New York, 2nd ed. 1931 [Quoted by Autar Krishen Koul in A Text Book of Jurisprudence, p.186, Satyam Law International, Ansari Road, Daryaganj, New Delhi, 110002, India, 1st ed. 2009]
14. (1868) LR 3 HL 330
15. AIR 1950 SC 27
16. AIR 1978 SC 597
17. Jerome Frank, Say It with Music, Harvard Law Review, Vol.61, No.6 (June 1948) pp. 921-957
18. Jerome Frank, Law and the Modern Mind, p.125 (1930)
19. ibid
20. Karl Llewellyn, A Realistic Jurisprudence- The Next Step, 30 Colum. L. Rev. 431 (1930)
21. Jerome Frank, Law and the Modern Mind (1930) Brentano's Publishers, New York
22. Supra note 14 pp 42-47
23. N.E.H. Hull, Roscoe Pound and Karl Llewellyn, Searching For An American Jurisprudence 180-81 (1997)
24. Roscoe Pound, The Call for a Realist Jurisprudence, 44 Harv. L. Rev. 697 (1931)
25. Karl. N. Llewellyn, Some Realism About Realism- Responding to Dean Pound, 44 Harv. L. Rev. 1222 (1931)
26. Michael Steven Green, Legal Realism as Legal Theory, 46 WM & Mary L. Rev. 1915, 1917
27. Horwitz, Transformation of American Law, p.208-9
28. Prof. Leon Green, The Duty Problem in Negligence Cases (1928),28 Col.L.Rev. p.104 at p. 1016
29. K.N. Llewellyn, Some Realism about Realism, (1931) 44 H.L.Rev. 1222
30. "Judicial Process with Particular Reference to the US and to India", (1963) 5 JILI 279
31. Prof. Dr. A. Lakshminath, Judicial Process- Precedent in India, p.123, Eastern Book Company, Lucknow, 2nd Edn. 2009
32. Arthur Taylor von Mehren, The Judicial Process with Particular Reference to the United States and to India, Vol.5, No.2 (Apr-June, 1963), pp. 271-280, Journal of the Indian Law Institute
33. Madhav Godbole, The Judiciary and Governance in India, 1st Edn. (2009), Rupa & Co., Ansari Rd, New Delhi
34. S.P. Sathe, Judicial Activism in India, 1st Edn. (2002), Oxford University Press, New Delhi
35. George H. Gadbois, Jr., Indian Judicial Behaviour, Economic and Political Weekly, Vol. 5, No. 3/5 (Jan 1970)
36. Gobind Das, Supreme Court in Quest of Identity, 2nd Edn. 2000, Eastern Book Company
37. G. Sahu, Environmental Jurisprudence and the Supreme Court, p.73, Orient Blackswan, New Delhi, 1st ed. 2014
38. Stare decisis is a term given to the doctrine of precedent. It is a general maxim that when a point has been settled by an earlier judicial decision, it forms a precedent which is not to be departed from by subsequent judges.
39. Benjamin Cardozo, The Nature of the Judicial Process (1921), Yale University Press, U.S.A.
40. AIR 1978 SC 597.
41. AIR 1993 SC 477
42. (1993) 4 SCC 441
43. SP Gupta v. Union of India, AIR 1982 SC 149
44. AIR 1999 SC 1
45. AIR 1994 SC 1918
46. (1998) 1 SCC 226.
47. AIR 2003 SC 2363
48. Rural Litigation Entitlement Kendra, Dehradun v. State of U.P., AIR 1985 SC 652; MC Mehta v. Union of India & Others and Shriram Food Fertilizer, AIR 1987 SC 1086; Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446; Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.
49. Gobind Das, Supreme Court in Quest of Identity, 2nd Edn. 2000, Eastern Book Company, Lucknow
50. Shylashri Shankar, Winds of Change: Judicialization of Mega-politics in India, Times of India, 4.3.2011.
51. Sunil Batra v. Delhi Administration, AIR 1980 SC 1579; DK Basu v. State of West Bengal, AIR 1997 SC 610
52. People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473; Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802; M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699.
53. In Re: Death of 25 Chained Inmates in Asylum Fire in T.N., v. Union of India, Civil Writ Petition No. 334 of 2001, Decided on 05.02.2002
54. Mohini Jain v. State of Karnataka, AIR 1992 SC 1858; Unni Krishnan v. State of A.P., AIR 1993 SC 2178; T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355
55. Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; Chameli Singh v. State of U.P., AIR 1996 SC 1051
56. Vishaka & Ors v. State of Rajasthan & Ors, AIR 1997 SC 3011.
57. Vineet Narain v. Union of India, AIR 1998 SC 889
58. MH Hoskot v. State of Maharashtra (1978) 3 SCC 544; Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369; Khatri & Others v. State of Bihar (1981)1 SCC 627; Sheela Barse v. State of Maharashtra (1983) 2 SCC 96; Suk Das v. UT of Arunachal Pradesh, AIR 1986 SC 991; State of Maharashtra v. Manubhai Pragaji Vashi (1995) 5 SCC 730.
59. Rudul Shah v. State of Bihar, AIR 1983 SC 1086; Bhim Singh v. State of J&K, AIR 1986 SC 494; Saheli v. Commissioner of Police, Delhi, AIR 1990 SC 513; Nilabati Behra v. State of Orissa, AIR 1993 SC 1960; Chairman, Rly Board v. Chandrima Das, AIR 2000 SC 988